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## Harry Potter and the Copyright Lawyer

Use of Popular Characters Puts 'Fan Fiction' Writers in Gray Area

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SAN FRANCISCO -- While J.K. Rowling was finishing up her latest Harry Potter sequel these past three years, so was Christina Teresa.

From her third-story apartment here, Teresa typed out a 250-page novella that she posted on the World Wide Web. In the world she created, the dreaded Professor Severus Snape -- the greasy-haired, big-nosed misfit who is Harry's nemesis -- turns out to actually be a good guy trying to infiltrate the evil forces that threaten the wizarding world. The story, posted on Sugarquill.net, was an instant hit, attracting thousands of readers from around the world.

As fans await the June 21 release of Rowling's fifth novel about the magical boy with the trademark lightning scar on his forehead, they can find tens of thousands of stories online about what the boy wizard is up to next.

In the past few years, a curious literary genre known as "fan fiction" has been flourishing. The term refers to all manner of vignettes, short stories and novels based on the universes described in popular books, TV shows and movies. Similarly derived works are appearing in music, where fans are using their computers to mix songs from popular artists into new works that they call "mashups." Movie fans are taking digital copies of films such as the "Star Wars" epics and creating alternate endings or deleting characters such as the much-maligned Jar Jar Binks.

The explosion of these part-original, part-borrowed works has set authors of fan fiction against some media companies in a battle to redefine the line between consumers' right to "fair use" and copyright holders' rights to control their intellectual property.

"We don't grow up hearing stories around the campfire anymore about cultural figures. Instead we get them from books, TV or movies, so the characters that today provide us a common language are corporate creatures," said Rebecca Tushnet, an assistant professor of law at New York University who has written extensively on intellectual property.

Fan-fiction creators say their work represents the emergence of an art form that takes advantage of all that the Internet was built for. They invoke the First Amendment and say that under fair-use laws they have a right to create what they want as long as they are not trying to profit at the expense of the original material. But some book, music and movie houses argue that fan fiction is more plagiarism than high art and have demanded that operators of Web sites remove the offending material.

Rowling has unofficially sanctioned some fan-fiction sites by leaving them alone. To many of those that feature adult material, however, her agents have sent sharply worded cease-and-desist letters.

The author is "flattered by genuine fan fiction," said Neil Blair, an attorney for the Christopher Little Literary Agency, which represents Rowling. But she has been alarmed by "pornographic or sexually explicit material clearly not meant for kids."

Christopher Little began sending out letters last year because it feared "the dangers of, say 7-year-olds, stumbling on the material as they searched for genuine [Harry Potter] material," Blair said in an e-mail response to questions.

Vicki Dolenga, 31, writes for RestrictedSection.org, which features about 1,200 stories, many of which involve Harry Potter characters engaging in sexual relations or violence. She said some media companies' aggressive actions against selected sites is stifling the creativity of writers who want to explore more mature themes.

In part as a response to publishers' legal entreaties, one Web site, FanFiction.net, removed all NC-17 stories, including Dolenga's. So in the fall of 2002, she and some friends founded RestrictedSection.org as an outlet for their work. The cease-and-desist letters followed. Dolenga said the group has hired a lawyer and is not taking any stories down.

"My opinion is that if we aren't making any money off of it, it shouldn't be any of their business," Dolenga said.

Fan fiction has existed for decades but primarily as a fringe hobby among friends who passed along typed or handwritten manuscripts to one another. But thanks to the ubiquity of the Internet, it has jumped into the popular consciousness with a following so large that it is now a topic of graduate theses and writing contests and a significant marketing outlet for media corporations. One of the largest collections of fan fiction is built on Harry Potter. On FanFiction.net alone, the granddaddy of fan-fiction sites, there are some 75,000 stories about the character.

One well-read story goes back in time to recount how Harry Potter's parents died while trying to save him. Another tells the same tale as in the first books but from the perspective of Hermione Granger, one of Harry's two best friends, who recounts her adventures to her talking diary. Some of the stories imitate Rowling's style so well that readers say they were confused about which facts they read in her books and which they read online. Others purposefully break from Rowling's world, spinning out characters who take drugs, become killers or engage in sexually explicit acts.

Among the most popular sites is Sugarquill.net. It prides itself on its selectivity and takes only those submissions that it believes match the tone and spirit of Rowling's first four novels. Sugarquill, founded two years ago by Jennie Levine and Megan Morrison, two friends from Baltimore, now hosts more than 500 writers and artists who have created 1,300 stories and 650 illustrations, cartoons and other pieces of art. The site was named after a candy that appears in Rowling's novels. (In book three, Harry's friend Ron Weasley says, "Really excellent sugar quills, which you can suck in class and just look like you're thinking what to write next.") The site is run by volunteers and funded by the women's savings.

Levine, 30, a librarian at the University of Maryland at College Park, and Morrison, 27, an instructional assistant in Howard County, see their site as a sort of school for aspiring authors. They say writing fan fiction is not all that different from a school assignment requiring one to craft a missing chapter of Homer's "Odyssey" or an alternate ending to Jane Austen's "Pride and Prejudice."

All works that appear on the site are screened and edited for content, logic, grammar and other things by "professor" volunteers; only about half the submissions are accepted. The site has forums where people can discuss plot points, character creation and other story-development issues. Every story has a feedback link where anyone can offer praise or criticism.

"If you start writing fiction you have to invent everything -- the universe, the characters, the setting. With fan fiction it's all there for you. . . . We see the ultimate goal for everyone is to be able to write their own original fiction, but this is sort of a way for people to get started and build up their confidence," Levine said.

Teresa was among the first writers who joined Sugarquill. The thirtysomething history student at San Francisco State University stumbled on the site two years ago after she read the books and typed "Harry Potter" into an Internet search engine to find out more. Teresa, who had written as a hobby for many years but had yet to be published, decided she would give fan fiction a try and explore what interested her most about the books -- the adults, especially the witches and wizards who teach at Hogwart's Academy, Harry's school.

Good Potter writers walk a fine line. They must be creative, yet they must be masters of the "canon," Rowling's first four novels. Teresa's hard-bound copies of the Harry Potter books, for instance, are filled with yellow Post-it stickies marking important facts.

She says she loves writing fan fiction because of the collaborative nature of writing for the Web and the instant feedback. "You have an automatic fan base," she said. She frequently e-mails paragraphs back and forth to her friends on the site and takes seriously the comments from the more than 200 people who have posted remarks about her work.

Teresa said she would love for someone to publish her fan fiction one day, but she's not sure that's realistic given the legal quagmires surrounding the genre.

The law remains blurry about what's acceptable, said Wendy Seltzer, a staff lawyer at the Electronic Frontier Foundation and a fellow at the Berkman Center for Internet and Society at Harvard University. Copyright law protects "derivative works," but it's not clear whether the use of names or characters or histories fall into that category. On the other hand, the law also protects people's fair use of material from copyrighted books for such things as newspaper articles and criticism. The ambiguity also raises a slew of questions about who owns the fan fiction, about what might happen if, say, the author of the original piece lifted material from fan fiction or if fan-fiction writers take from other fan-fiction writers.

Recently, a group of prominent Internet law and intellectual-property experts has been trying to find a way to bridge the desires of those who want to build on others' creative works and the people who own those works. They launched Creative Commons, a nonprofit organization based at the Stanford Law School Center for Internet and Society. The organization has created a repository of works that people can borrow from and has drafted a set of licenses intended to allow people to share their works while still protecting their ownership.

"If you're a creator you can easily distribute that stuff online, but the power of the Internet that still needs to be realized is reusing other people's stuff. The barrier is the legal obstacles," said Hal Abelson, a professor of computer science at the Massachusetts Institute of Technology and a founder of Creative Commons. In the six months the organization has existed, artists have used its licenses to share roughly 250,000 works, mostly writings.

Teresa is in the middle of another long piece, this time something funny and light about Snape's new wife's conflict with Lucius Malfoy, a notoriously mean wizard and the father of Harry Potter's arch rival, Draco Malfoy. She hopes to finish the rest this summer. As always, before she posts a new installment she will make sure to put a little "c" with a circle at the top, staking a claim to a copyright. But, she acknowledges, she's not sure what would happen if she got an offer to sell her stories. Does she in fact own the stories she wrote -- or does J.K. Rowling?

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